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PROJECT NO. 51841

REVIEW OF 16 TAC § 25.53 RELATING	§	PUBLIC UTILITY COMMISSION
TO ELECTRIC SERVICE EMERGENCY	§	
OPERATIONS PLANS	§	OF TEXAS

**ALLIANCE FOR RETAIL MARKETS’
COMMENTS IN RESPONSE TO PROPOSAL FOR PUBLICATION**

I. INTRODUCTION

The Alliance for Retail Markets (“ARM”)¹ respectfully submits the following comments on the Proposal for Publication (“PFP”) to repeal and replace 16 TEXAS ADMINISTRATIVE CODE (“TAC”) § 25.53, relating to Electric Service Emergency Operations Plans. The PFP included a deadline of January 4, 2022 for responsive comments from stakeholders. Therefore, these comments are timely filed.

ARM is an association of competitive retail electric providers (“REPs”), and each member is certificated to provide retail electric service to customers in areas open to customer choice in Texas. ARM offers the following comments, with an executive summary as a separate last page.

II. COMMENTS IN RESPONSE TO THE PROPOSAL FOR PUBLICATION

These comments provide an explanation of ARM’s recommendations for each applicable subsection of 16 TAC § 25.53 included in the PFP along with redlines showing changes to the proposed new rule text. At the outset ARM notes that the proposed rule significantly adds to the requirements a REP must provide for their EOP.² REPs have developed their current plans to be consistent with their operational structures and have successfully navigated multiple events and/or emergencies within the past few years with Winter Storm Uri, COVID, and for certain office locations, hurricanes, within the structure of their current plans. By necessity, these plans have been more comprehensive than the rule’s requirements. Changes to these requirements of what must be provided to ERCOT and the Commission should strike an appropriate balance of

¹ The members of ARM participating in this project are: Calpine Retail; NRG Retail Companies (Reliant, Green Mountain Energy Company, U.S. Retailers LLC (Cirro Energy and Discount Power), Stream SPE, Ltd., XOOM Energy Texas, LLC, and the Direct Energy family of retail electric providers); and the Vistra Corp. REPs (4Change Energy, Ambit Energy, Express Energy, TriEagle Energy, TXU Energy, and Veteran Energy).

² Existing 16 TAC § 25.53(c)(3) provides that a REP shall include in its emergency operations plan, but is not limited to, an affidavit from an owner, partner, officer, manager, or other official with responsibility for the REP’s operations affirming that the REP is prepared to implement the plan in the event of an emergency affecting the REP.

providing transparency of an entity's ability to operate in the face of emergencies, while not being overly burdensome, administratively inefficient, or risking the disclosure of sensitive information.

A. Section (b), Definitions

The PFP defines "entity" in subsection (a), which specifies applicability. To promote clarity, ARM recommends that a definition of "Entity" be moved to subsection (b). Furthermore, regardless of where that definition sits in the final rule, it should be clear that "entity" can be read to cover a group of affiliated entities such that the individual affiliated entities do not need to replicate the administrative efforts for documents that will largely be very similar if not exactly the same in some instances. This will provide material benefits to market participants, the Commission, and ERCOT, as it will allow for the provision of the EOP in the organizational structure that market participants use, and reduce the documents to be reviewed by the Commission and ERCOT.

Additionally, the proposed definition of "emergency" in § 25.53(b) addresses endangerment to (1) lives, (2) property, or (3) the continuity of electric service. There is no definition of "emergency" elsewhere in the Commission's rules or in the Public Utility Regulatory Act ("PURA"), and it is not clear what "presents credible risk to the continuity of electric service" means. The ERCOT Nodal Protocols provide a definition of "emergency condition" as: "an operating condition in which the safety or reliability of the ERCOT System is compromised or threatened, as determined by ERCOT." Conforming with the existing definition may help promote clarity and continuity. If the Commission agrees, then a similar adjustment would be warranted in the definition of "emergency operations plan" as well.

Another clarification to the definition of "emergency" is that governmental entities are more likely to declare a "disaster" (e.g., for a hurricane or a pandemic), whereas ERCOT or another reliability coordinator are more likely to declare an "emergency" (e.g., and energy emergency alert or "EEA" condition). However, not every disaster or emergency declaration warrants utilization of EOP procedures for a given entity.

Similarly, the definitions of "hazard" and "threat" should at a minimum be aligned with the definition of "emergency" because they include references to the "information," "operations," and "the environment," but not the continuity of electric service. These additional terms are simultaneously expansive and restrictive of the definition, since they could require EOPs to include content extraneous to the objective of protecting system reliability, while at the same time limiting

the scope of hazards considered in EOPs. ARM therefore suggests that the plain meaning of the terms are just as (if not more) effective and the proposed definitions can be left out of the final rule.

ARM therefore recommends moving the definition of “entity” to subsection (b) (with appropriate renumbering) and revising the proposed definition of “emergency” in 25.53(b)(3) to better specify what *may* constitute endangerment to the continuity of electric service, with conforming changes to the definition of “emergency operations plan” in 25.53(b)(4), as well as either deletion or modification of the definitions of “hazard” and “threat”:

(a) Application. This section applies to each electric utility, transmission and distribution utility, power generation company (PGC), municipally owned utility, electric cooperative, and retail electric provider (REP), and to the Electric Reliability Council of Texas (ERCOT). ~~The term “entity” as used in this section refers to the above-listed entities.~~

(b) Definitions.

(1)-(2) (no change)

(3) **Emergency**—any incident resulting from an imminent hazard or threat that endangers life or property or ~~presents credible risk~~ creates an operating condition in which the safety or reliability to the continuity of electric service is compromised or threatened. The term ~~includes~~ may include an emergency or disaster declared by local, state, or federal government; ERCOT; or a Reliability Coordinator that is applicable to the entity.

(4) **Emergency operations plan (EOP)** -- the plan and any attached annexes, maintained on a continuous basis by an entity, intended to protect life, ~~and~~ property, ~~and ensure continuity of adequate~~ safety or reliability of electric service in response to an emergency.

~~(5) Entity -- an electric utility, transmission and distribution utility, PGC, municipally owned utility, electric cooperative, REP, or ERCOT. The singular term “entity” as used in this section may also include a grouping of affiliates of the above-listed entities.~~

~~(5) Hazard — a natural, technological, or human-caused condition that is potentially dangerous or harmful to life, information, operations, the environment, or property.~~

~~(6) Threat — the intention and capability of an individual or organization to harm life, information, operations, the environment, or property.~~

~~[or]~~

~~(56) Hazard -- a natural, technological, or human-caused condition that is potentially dangerous or harmful to life, information, operations, the environment, or property, or the safety or reliability of electric service.~~

~~(67) Threat -- the intention and capability of an individual or organization to harm life, information, operations, the environment, or property, or the safety or reliability of electric service.~~

B. Section (c), Filing Requirements

Section (c)(1) would require an entity to file an Emergency Operations Plan (“EOP”) in compliance with the new rule by April 1, 2022, and beginning in 2023 annually file an EOP no later than February 15th. The final rule in this Project likely will not be effective until March 2022 at the earliest. Additionally, the proposed rule will create numerous new requirements that have not previously existed and may require REPs and other entities to substantially reorganize or entirely rewrite their EOPs (e.g., if existing EOPs do not follow the prescribed outline/annex structure or must incorporate new requirements not previously contemplated). Thus, an initial deadline of April 1, 2022 is not practical to develop and file an EOP in compliance with the additional requirements under the proposed rule, or to conduct the training on the revised EOP that the proposed affidavit would require to have been completed.

Furthermore, both the proposed April 1 initial filing deadline and the proposed February 15 annual filing deadline correspond with other significant reporting obligations and deadlines that require many of the same resources for entities covered by the rule.³ In contrast, the existing June 1 deadline for preparing EOPs is already a part of entities’ compliance calendars and naturally aligns with the start of the summer peak season. ARM therefore recommends that the initial deadline to file an EOP be changed to the later of June 1, 2022 or 120 days after the rule becomes effective, and that the subsequent deadline to file annual EOPs also be changed to June 1. ARM also reiterates its request that the Commission clarify in rule or at a minimum in the Preamble that entities that share a parent company be permitted to file a single EOP and specify the sections that apply to the commonly-owned entities and the sections that are specific to particular entities. This would minimize administrative burdens and increase the efficiency in the reporting process for entities.

Subsections (c)(1)(A) and (B) would require each entity to submit its unredacted EOP “in its entirety” to ERCOT and file it with the Commission, along with a public redacted EOP filed with the Commission. The requirement to file EOPs in their entirety with both ERCOT and the Commission is unnecessarily duplicative. ARM recommends that the rule require entities to submit

³ For example, REP annual reports are required to be filed by March 5 (see 16 TAC § 25.107(i)(5)); semi-annual Electricity Facts Label updates in response to major TDU rate changes (e.g. TCRFs) must be made by March 1; quarterly retail performance reports are due for the fourth quarter by February 14 (see 16 TAC § 25.88(c)(2)); Renewable Energy Credit retirements for Renewable Portfolio Standard compliance must be submitted to ERCOT by March 31 (see 16 TAC § 25.173(n)(2)); and TDUs’ DCRF filings made the first week of April must be reviewed for potential intervention.

an unredacted EOP to ERCOT and file a redacted public version or comprehensive summary with the Commission. This would allow the Commission to ensure that entities are prepared for emergencies in compliance with the rule without imposing unnecessary and over-burdensome duplicative reporting requirements. ARM notes that under its recommendation and in reading subsection (c)(5), ERCOT would be required to maintain its unredacted EOP, and the unredacted EOPs of other entities, for Commission review. For entities with operations outside of ERCOT, the same concerns likely also exist, but ARM is not in a position to offer alternative language for them. Therefore, the proposed redlines below still contemplate that such entities would need to file their unredacted EOP with the Commission, even though that is not something that ARM is advocating for.

Further, ARM notes that REPs and other entities may have a compilation of documents and procedures that collectively constitute their EOP with certain documents applicable to the entire organization, and certain documents applicable to specific teams across the organization, rather than a single EOP document that would apply across an entire organization. ARM recommends that the rule be modified or that the preamble clarify that an EOP “in its entirety” may either be a single document, or a compilation of the parts of documents that meet the requirements of the rule with a clear table of contents. This would ensure that the Commission and ERCOT can confirm compliance with the rule, while allowing entities to comply without the unnecessary administrative burden of rewriting and completely restructuring existing procedure documents. If entities voluntarily have additional measures not included in the rule, they should not be subject to providing/filing and potentially public disclosures.

Subsection (c)(1)(C) would require the annual EOP filings to include “for each incident in the prior calendar year that required the entity to activate its EOP, a summary after-action report that includes lessons learned and an outline of changes the entity made to the EOP as a result.” ARM recommends two modifications. First, the sentence should add “if any” to indicate that this report is only required if such an incident occurred during the prior year. Second, the requirement should be revised to only require a general overview of the prior year’s activity. Requiring a report for each incident would be administratively burdensome and with little incremental value over an overview. The term “emergency” is broadly defined in the proposed rule and would include emergencies declared by the local, state, or federal government, which can happen for many reasons that have nothing to do with continuity of electric service in Texas.

ARM's recommended revisions to section (c) is as follows:

- (1) An entity must file an EOP under this section by ~~April~~June 1, 2022 ~~or 120 days after the final order in Project No. 51841 becomes effective, whichever is later.~~ Beginning in 2023, an entity must annually file an EOP no later than ~~February 15~~June 1 in the manner prescribed by the commission.
 - (A) An entity with operations outside the ERCOT power region must file with the commission its unredacted EOP in its entirety and a public, redacted EOP or a comprehensive summary of its EOP.
 - (B) For an entity with operations within the ERCOT power region, the entity must submit its unredacted EOP in its entirety to ERCOT and must file with the commission a copy of its EOP in a redacted form with confidential portions removed or a comprehensive summary of its EOP.
 - (C) Beginning in 2023, the annual EOP must include, ~~for each incident in the prior calendar year that required the entity to activate its EOP,~~ a summary ~~after action~~ report that includes lessons learned and an outline of changes the entity made to the EOP as a result of EOP activations during the prior calendar year, if any.
- (2) A person seeking registration as a PGC or certification as a REP must ~~file~~submit an EOP to ERCOT and file with the commission a copy of its EOP in a redacted form with confidential portions removed at the time it applies for registration or certification with the commission, ~~and must submit the EOP to ERCOT if it will operate in the ERCOT power region, no later than ten days after the commission approves the person's certification or registration.~~
- (3) Updated filings. An entity may submit an updated EOP to ERCOT and file an updated redacted copy of the EOP with the commission upon a request from staff for additional information, if staff believe the entity's EOP does not contain sufficient information to determine whether the entity can provide adequate electric service through an emergency. An entity must ~~file~~submit an updated EOP to ERCOT and file an updated redacted copy of the EOP with the commission within 30 days under the following circumstances.
 - (A) ~~An entity must file an updated EOP if~~The commission ~~staff~~ determines that the entity's EOP ~~on file~~ does not contain sufficient information to determine whether the entity can provide adequate electric service through an emergency.
 - (B) ~~An entity must file an updated EOP if~~In response to ~~feedback provided from a~~ commission staff ~~order.~~

(C) ~~An entity must file an updated EOP if~~ the entity makes a significant change to its EOP. A significant change to an EOP includes a change that has a material impact on how the entity would respond to an emergency. The entity must file the updated EOP with the commission no later than 30 days after the change takes effect.

(D) An entity with operations within the ERCOT power region must submit its updated EOP under paragraphs (c)(43)(A), (c)(43)(B), and (c)(43)(C) to ERCOT ~~within 30 days of filing~~ at the same time the updated EOP is filed with the commission.

(4) Notwithstanding the other requirements of this subsection, ERCOT must maintain ~~at its~~ its current EOP in its entirety, consistent with the requirements of this section, as well as the EOPs of other entities in their entirety, and available for review by the commission, or the commission's designee. EOPs maintained by ERCOT must be treated as protected information under Section 25.362.

C. Section (d), Information to be included in the emergency operations plan.

Subsection (d) states that an EOP must address “every type of emergency,” which should be interpreted to mean “every reasonably foreseeable type of emergency,” but to avoid any potential confusion, ARM recommends that the rule language be clarified accordingly.

Subsection (d)(1)(B) requires a listing of individuals responsible for maintaining and implementing the EOP. ARM recommends that the rule also allow in the alternative for the identification of groups or teams responsible for these activities. This would reduce the administrative burden of updating EOPs due to employee turnover while not reducing its effectiveness.

Subsection (d)(1)(C)-(E) requires the EOP to include an approval and implementation section that provides a revisions control summary outlining and dating each change made to the EOP, a dated statement that the current EOP supersedes previous EOPs, and the date the EOP was most recently approved by the entity. ARM recommends removing the first two items because the first is overly burdensome and the second should be obvious. Subsection (c)(4)(C)-(D) already requires an entity to file an updated EOP if it makes a significant change to the EOP. That requirement combined with the requirement in (d)(1)(E) that the EOP include the date it was most recently approved is more than sufficient to track revision history of the EOP.

Subsection (d)(2) would require entities to include in the EOP a record of distribution in table format of the titles and names of every person in the organization who received the EOP and

the dates of distribution. Delivering hundreds of pages of procedures is less likely to be read by relevant personnel than tens of pages that are specifically relevant to a person's work function. ARM believes the affidavit required in subsection (d)(4) is sufficient because it requires an affirmation that all relevant operating personnel of the entity's organization are familiar with the applicable contents of the EOP and that such personnel are committed to following the plan except to the extent deviations are appropriate under the circumstances during the course of an emergency. This approach better strikes the appropriate balance of ensuring that entities are prepared for emergencies without additional administrative burden that adds little if any value. Should subsection (d)(2) be retained, however, ARM recommends that the requirement be made less prescriptive, at a minimum striking the requirement to list individuals receiving the EOP, as that requirement would add significant volume, complexity, and ultimately cost in compliance with little to no incremental benefit. Different groups may receive different component procedures of the EOP at different points in time, so the information that (d)(2) proposes be recorded "in table format" could be large and multidimensional – not an ideal candidate for reducing to a printed table.

Subsection (d)(4) would require an entity to include an affidavit from its highest-ranking representative, official or officer with binding authority over the entity. That could add a significant compliance bottleneck, particularly for this first revision/rewrite that might span multiple REP operations as well as generation operations for affiliated power generation companies that would all have to go through the same individual. ARM recommends that the rule retain the current requirement to provide an affidavit from an owner, partner, officer, manager, or other official with responsibility for the entity's *operations*. This would provide entities the discretion to identify the person with the best knowledge of the entity's operations to submit the affidavit. This approach is consistent with other PUC rules, such as 16 TAC § 25.71(d), which requires that all reports submitted to the Commission be attested to by "an officer or manager...under whose direction the report is prepared," or "other official in responsible charge of the electric utility's or the electric cooperative's operation." Similar language is found in the generating capacity reporting requirements in 16 TAC § 25.91(d) for PGCs, municipally-owned utilities, and electric cooperatives, and in the market performance reporting requirements in 16 TAC § 25.88(e)(2) for REPs and transmission and distribution utilities, which are all required to "be attested to by an owner, partner, officer, or manager of the reporting entity."

Additionally, subsection (d)(4)(F) implies a requirement that all personnel designated to interact with local, state, and federal emergency management officials during an emergency have specific training from the National Incident Management System. ARM requests that this proposed requirement in (d)(4)(F) either be deleted, folded into a more generic (d)(4)(A), or be revised so that only one person within an entity be required to have received the formal training. This requirement is unnecessarily burdensome due to the time requirements to complete the training, which are up to 3.5 hours each and do not all currently appear to be available online. It also may create a communications bottleneck should entities only be allowed to communicate through personnel with the specific training. Emergencies by their nature may render designated employees unavailable or needing to delegate activities across a broader, potentially ad hoc, team.

Subsection (d)(5)(C) would require REPs to describe communications procedures, including complaint handling procedures. While the nexus between emergency management related to electric reliability and communications is apparent, the proposed requirement to address complaint handling during an emergency is less clear. ARM agrees that complaint handling is an important retail function, but it is not clear that complaint handling would be impacted by most emergencies. Complaint handling under Section 25.485 requires that REPs promptly investigate and respond to complaints within 21 days (regardless of whether the complaint is to the REP or to the Commission), whereas most emergencies are acute events.

ARM's recommended revisions to section (d) are as follows:

(d) Information to be included in the emergency operations plan. An entity's EOP must address both common operational functions that can be used for every reasonably foreseeable type of emergency and annexes that outline the entity's response to the types of emergencies specified in subsection (e). Each entity's EOP must include the following information^{7,2} if applicable. If a provision in this section does not apply to an entity, the entity must include in its EOP an explanation of why the provision does not apply.

(1) An approval and implementation section that:

(A) introduces the EOP and outlines its applicability;

(B) lists the individuals, teams, or groups responsible for maintaining and implementing the EOP, and those who can change the EOP; and

~~(C) provides a revision control summary which outlines and dates each change made to the EOP since the last time the EOP was adopted by the entity;~~

~~(D) provides a dated statement that the current EOP supersedes previous EOPs; and~~

~~(E)~~ (C) the date the EOP was most recently approved by the entity.

~~(2) A record of distribution that contains the following information in table format:~~

~~(A) titles and names of persons in the entity's organization receiving the EOP; and~~

~~(B) dates of distribution.~~

~~(3)~~ (2) A list of emergency contacts for the entity, including identification of single points of contact during an emergency.

~~(4)~~ (3) An affidavit from the entity's ~~highest ranking representative, official, or owner, partner, officer, manager, or other official~~ with responsibility for binding authority over the entity's operations affirming the following:

(A) Relevant ~~operating~~ personnel are familiar with and have received training on the contents and execution of the EOP, and such personnel are committed to following the EOP except to the extent deviations are appropriate as a result of specific circumstances during the course of an emergency;

(B) the EOP has been reviewed and approved by the appropriate executives;

(C) required drills have been conducted;

(D) the EOP or an appropriate summary has been distributed to local jurisdictions as needed; and

(E) the entity maintains a business continuity plan that addresses returning to normal operations after disruptions caused by an incident; and

~~(F) the entity's emergency management personnel who are designated to interact with local, state, and federal emergency management officials during emergency events have received National Incident Management System training, specifically IS 700.a, IS 800.b, IS 100.b, and IS 200.b.~~

~~(5)~~ (4) A communication plan:

(A) – (B) (no change)

(C) A REP must describe the procedures for communicating with the public, media, customers, and the commission ~~and the procedures for handling complaints during an emergency.~~

D. *Section (e), Annexes to be included in the EOP.*

Subsection (e)(3) lists specific annexes that REPs must include in their EOPs. While ARM does not dispute that a REPs' procedures should ensure the REP can address these different types of emergencies, separate annexes may not make operational sense or be necessary depending on the structure of the REP's plan. REPs have successfully navigated multiple events or emergencies the past few years with Winter Storm Uri, COVID, and for certain office locations, hurricanes, within the structure of their current plans which may or may not have separate sections for different emergency types. Accordingly, ARM recommends that the Commission eliminate a potentially expansive, administratively burdensome, and competitively sensitive requirement change to REP EOPs and make those provisions required only if the existing plan does not include procedures that can be used in those types of emergencies.

- (3) A REP's EOP must either include procedures that can be used in the following types of emergencies, or a REP must include in its EOP the following annexes:

III. CONCLUSION

For the reasons stated herein, ARM respectfully recommends that the Commission propose amendments to 16 TAC § 25.53 in accordance with these comments in the forthcoming Proposal for Adoption.

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Respectfully submitted,



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**ATTORNEYS FOR ALLIANCE FOR RETAIL
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**PROJECT NO. 51841 - EMERGENCY OPERATIONS PLANS
ALLIANCE FOR RETAIL MARKETS' EXECUTIVE SUMMARY**

- Provide that entities that share a parent company are permitted to file a single EOP with shared and unique sections specified.
- Clarify that an EOP “in its entirety” may include one or more documents that meet the requirements of the rule or can be a compilation of required parts of documents.
- 25.53(a)—Move the definition of “entity” to subsection (b) with the other definitions and clarify that the singular term “entity” can cover a group of affiliated entities.
- 25.53(b)(3) & (4)—Revise the proposed definitions of “emergency” and “emergency operations plan” to better specify what constitutes endangerment to the continuity of electric service and to align with the ERCOT Protocol definition of “emergency condition”.
- 25.53(b)(5) & (6)—Remove definitions of “hazard” and “threat”. If not, modify these to better align with definition of “emergency”.
- 25.53(c)(1)—Change the initial deadline to file an EOP from April 1, 2022 to the later of June 1, 2022 or 120 days after the rule becomes effective, and change the subsequent ongoing deadline to file annual EOPs to June 1 instead of February 15.
- 25.53(c)(1)(B)—Require entities in the ERCOT power region to submit an unredacted EOP to ERCOT and file a redacted public version or comprehensive summary with the Commission.
- 25.53(c)(1)(C)—Change incident reporting to a general overview of the prior year’s activity, if any, instead of requiring a report for each incident.
- 25.53(c)(2)—Changes consistent with changes suggested for 25.53(c)(1).
- 25.53(c)(3)—Restructure so that entities may voluntarily file an updated EOP upon Staff request, but must provide an updated EOP pursuant to a Commission Order.
- 25.53(c)(4)—Require ERCOT to treat EOPs on file as confidential Protected Information and make them available to the Commission or the Commission’s designee for review.
- 25.53(d)(1)(B)—Allow the listing of teams or groups responsible for the EOP.
- 25.53(d)(1)(C) and (D)—Delete the requirements to provide a revisions control summary outlining the changes and dates each change was made to the EOP and a dated statement that the current EOP supersedes previous EOPs.
- 25.53(d)(2)—Delete the requirement for a record of distribution in table format of the titles and names of every person in the organization who received the EOP.
- 25.53(d)(4)—Revise to retain the current affidavit requirement.
- 25.53(d)(4)(A) & (F)—Delete the NIMS training requirement because it is not only administratively lengthy to complete but also may create a communications bottleneck during emergencies if only the personnel that can interact with officials are constrained.
- 25.53(d)(5)(C)—Delete the “procedures for handling complaints” from the communication plan proposal.
- 25.53(e)—Modify to only require separate annexes if the REP’s EOP does not include procedures that can be used in the specified types of emergencies.